LIGGETT *v.* ROANOKE WATER CO.

Sept. 17, 1919.

[101 S. E. 55.]

1. **Corporations (§ 206 (1)*)—Stockholder's Right to Sue for Corporation; Refusal of Directors to Act.**—A stockholder may maintain suit for wrongful diversion of assets of corporation, where he alleges and proves that a request or demand has been made upon the board of directors or other body managing the corporation to institute proceedings and they have refused, or upon allegation and proof that it is reasonably certain a demand for corporate action would have been useless.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 829.]

2. **Corporations (§ 206 (4)*)—Stockholder's Right to Sue; Demand That Directors Sue Unnecessary.**—Where complainant corporation gave an option to a promoter for the purchase of part of its assets, complainant to receive part of the proceeds of a bond issue by the new corporation, the remainder to remain in the treasury, etc., held that, where defendant acquired the option from the promoter and paid the promotion fee out of the proceeds of the bond issue, complainant might maintain a suit to recover the amount diverted, without any demand on the corporate officers; the evidence showing that a demand would have been unavailing.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 826; 12 Va.-W. Va. Enc. Dig. 829.]

3. **Corporations (§ 30 (2)*)—Promotion Expenses; Payment.**—Where the majority stockholders of complainant corporation which owned and operated a waterworks company gave an option to a promoter to buy such part of the property as was used in its water supply business, the vendor to receive $550,000 of preferred stock in the new corporation to be organized, and to receive the sum of $526,800 out of the proceeds of $800,000 of bonds of the new corporation, which were to be sold at not less than 90, the remainder less $1,800 for incorporation expenses to remain in the treasury for working capital held that, where the promoter transferred his option to another for a large amount, the stockholders and directors of the new corporation could not ratify payment to the promoter of the amount agreed upon out of the proceeds of the bonds.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 530, 531.]

4. **Corporations (§ 30 (2)*)—Payment of Promotion Expenses; Acquiescence.**—Where complainant gave an option to a promoter for the sale of a portion of its assets, the promoter to organize a new corporation and issue stock to complainant and part of the pro-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ceeds of bonds, the rest to remain in the treasury, held, that there was no acquiescence by complainant in payment of the promoter's fee out of the proceeds of the bond issue; the promoter having for a large sum conveyed his option to defendant.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 531, 532.]

Appeal from Circuit Court of City of Roanoke.

Action by the Roanoke Water Company against John E. Liggett. From a decree for complainant, defendant appeals. Affirmed.

Hall, Wingfield & Apperson and *W. W. Coxe,* all of Roanoke, and *Storey, Thorndryke, Palmer & Dodge,* of Boston, Mass., for appellant.

Roy B. Smith, of Roanoke, for appellee.

WOLONTER *v.* UNITED STATES CASUALTY CO

Sept. 17, 1919.

[101 S. E. 58.]

1. Trial (§ 156 (3)*)—Demurrer to Evidence; Testimony Considered Most Favorably to Demurree.—Upon a demurrer to the evidence, the testimony of witnesses for the demurree must be accepted as true, unless inherently incredible or judicially known to be untrue, and if several inferences may be drawn from the evidence, differing in degrees of probability, those most favorable to the demurree must be adopted, unless forced, strained, or manifestly repugnant to reason.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 222, 223.]

2. Insurance (§ 665 (1)*)—Cancellation of Policy; Jury Question.—In action on accident policy to recover for accidental death of insured, defense being that policy had been canceled by company, prior to insured's death, by written notice mailed to insured's latest address appearing on company's record, under Acts 1912, c. 78, § 1, subd. "h," held, that it was error to sustain defendant's demurrer to the evidence.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 790.]

3. Insurance (§ 91*)—Notice of Change of Insured's Address.—Irrespective of Acts 1906, c. 112, subc. 2, § 34, an agent to solicit insurance was empowered to receive notice of change of address of insured, where the company had requested the agent to furnish it with insured's address.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 764.]

---

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.